

R-23-44

TOWN OF CUMBERLAND

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RESOLUTION: **AUTHORIZING AND EMPOWERING MAYOR JEFFREY J. MUTTER TO ENTER INTO AN AGREEMENT WITH PARE CORPORATION FOR SITE AND CIVIL ENGINEERING SERVICES FOR THE DIAMOND HILL PARK PUMP TRACK IN AN AMOUNT NOT TO EXCEED FIFTY THOUSAND FIVE HUNDRED DOLLARS (\$50,500)**

BE IT RESOLVED BY THE CUMBERLAND TOWN COUNCIL AS FOLLOWS:

WHEREAS: The Town of Cumberland has retained American Ramp Company (Resolution 23-10) to design and construct a pump track at Diamond Hill Park with funding from Rhode Island’s Department of Environmental Management; and

WHEREAS: The Town has sought Pare Corporation’s services to assist American Ramp Company with surveying, stormwater management design, and permitting services; and

WHEREAS: Pare Corporation has provided a quotation and scope of services for the site and civil engineering services that fifty thousand five hundred dollars (\$50,500); and

WHEREAS: On April 5th the Town Council approved resolution 23-23A, which provided for on-call firms. Pare Corporation is an approved on-call contractor for civil engineering and site plan review.

NOW THEREFORE, BE IT RESOLVED BY THE CUMBERLAND TOWN COUNCIL OF CUMBERLAND, RHODE ISLAND, AS FOLLOWS:

SECTION 1: Mayor Jeffrey J. Mutter is hereby authorized and empowered to enter into an agreement with Pare Corporation for the site and civil engineering services for the Diamond Hill Park Pump Track in an amount not to exceed fifty thousand five hundred dollars (\$50,500).

SECTION 2: This resolution shall become effective immediately upon passage.

DATE ADOPTED: _____

A TRUE COPY, ATTEST:

Sandra M. Giovanelli, Town Clerk

SFK: 5/16/23



Engineers | Scientists | Planners

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April 19, 2023

Mr. Joseph Duarte
Director
Town of Cumberland DPW
45 Broad Street
Cumberland, RI

Re: **Town of Cumberland
Pump Track at Diamond Hill Park
Site/Civil Engineering Services
(Pare Proposal No.: CP217.23)**

Dear Mr. Duarte:

In response to your request, Pare Corporation is pleased to have this opportunity to submit this Proposal to the Town of Cumberland (Client) for Professional Site/Civil Engineering and Permitting Services for the project referenced above. Outlined herein is a brief description of your project, our proposed Scope of Services, and the method and basis of compensation for our services.

PROJECT DESCRIPTION

The Town of Cumberland has retained American Ramp Company to design and construct a pump track at Diamond Hill Park. This proposal is to assist American Ramp with surveying, stormwater management design and environmental permitting services. Construction of the pump track will be in the cleared area to southeast of the pavilion. In general, Pare understands the project is to include the following:

- Topographic survey of the area.
- Wetland delineations.
- Stormwater management design.
- RIDEM wetland permitting if necessary.

SCOPE OF SERVICES

Basic Services

Site/Civil Engineering Services

Task 101 – Existing Conditions Survey

1. **Project Administration/Coordination/Meetings:** Pare will attend a kickoff meeting with the project team to establish the project goals and timeline.
2. **Field Review / Data Collection:** Pare will perform a field review to observe existing conditions and surface features that will be depicted on the existing condition plan and clarify for the scope for the same.

10 LINCOLN ROAD, SUITE 210
FOXBORO, MA 02035
508.543.1755

8 BLACKSTONE VALLEY PLACE
LINCOLN, RI 02865
401.334.4100

14 BOBALA ROAD, SUITE 2B
HOLYOKE, MA 01040
419.507.3448



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3. **Survey:** Pare has included Brennan Consulting to perform a complete base plan survey of the site, the survey will include the cleared area to the southeast of the pavillon and will include approximately 1 acre.
4. **Wetland Review:** Pare environmental scientists will perform a site visit to identify and delineate the jurisdictional wetland resources present in accordance with current Rhode Island Department of Environmental Management (RIDEM) wetland and/or river delineation criteria. Pare will locate wetland flags using a handheld GPS unit with submeter accuracy. During the delineation, soil and vegetation data will be collected for use in preparing Wetland Delineation Data Forms. Pare will prepare a report detailing the methodology used in the delineation. The delineation report will include the data forms and will be suitable for use in permit applications. Pare will provide GPS data points and a sketch of the delineation to assist in the survey.

Task 102 Design Development Phase

Pare will work with the layout and grading design prepared by American Ramp to develop erosion and sedimentation control plans and stormwater management plans for the project, Pare will perform the following engineering design services to prepare Design Development documents for submission to Client in accordance with the project schedule.

1. **Project Administration/Coordination/Meetings:** Pare will coordinate with the Client and the project team throughout this phase to discuss design development issues related to this project. It is anticipated that up to two (2) coordination meetings to discuss project related issues.
2. **Stormwater Management Subsurface Soil Investigations:** Pare will witness up to one day of test pits within the proposed stormwater management areas to provide subsurface soil characteristics and estimation of seasonal high groundwater. Test pit logs summarizing our observations will be prepared for reference and inclusion in the bid package.
 - Pare has assumed that an excavator and operator for this work will be provided by the client or owner and therefore no fee for this is included in this scope of work.
3. **Site Plan Development:** It is anticipated that the following plan sheets will be required for design development plan completion.
 - a. **General Site Plans:** General Site Plans will be prepared by American Ramp, Pare will review the grading plans and provide input for stormwater management.
 - b. **Grading Plans:** Grading plans will be prepared by American Ramp, Pare will review the grading plans and provide input for stormwater management.
 - c. **Demolition, Erosion, and Sediment Control Plans:** Demolition, Erosion, and Sediment Control Plans depicting existing site features to be removed, relocated, and/or disposed will be prepared. Erosion and sediment controls meeting the requirements of the RI Stormwater Manual will be depicted on the erosion and sediment control plans.
 - d. **Drainage Plans:** Drainage and Utility Plans will be prepared for presentation of the applicable



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drainage and other utility improvements associated with this project.

- o Pare understands that site lighting will be provided by others and therefore lighting and light base design is excluded from this scope of work.
 - e. **Details:** Pare will prepare detail sheets consisting of drainage, utility, site elements and erosion and sedimentation control details required for construction.
4. **Stormwater Management Narrative:** Pare is anticipating preparing a Stormwater Narrative to provide with the Design Plans. Pare will incorporate the design of sustainable and low impact stormwater management techniques for control of stormwater runoff. It is anticipated that the proposed stormwater management design will include a closed drainage system with on-site best management practices that provide water quality treatment, groundwater recharge, and detention in accordance with the RIDEM Stormwater Design Manual. Pare anticipates that this will be accomplished through a combination of stormwater facility improvements and may employ water quality swales, tree box filters, bioretention areas, sand filters, permeable surfaces, underground stormwater detention systems, or other best management practices to obtain no net increase in the rate of runoff from the site, if required.

Task 103 Construction Documents

Upon completion of the Design Development phase, Pare will perform engineering design services to prepare construction documents and project sitework technical specifications based on the layout and designs approved in Task 102.

Preparation of one submission for Construction Documents submissions are included in this phase. The following tasks are anticipated for the preparation of construction documents and specifications for the proposed project.

1. **Project Administration and Coordination:** Pare will coordinate with the Client and the project team during the development of the construction documents. It is budgeted that Pare will attend one meeting during this stage of the project via teleconference.
2. **Construction Document Development:** Pare will perform engineering services to prepare final construction document plans. Pare will coordinate final plan details, site layout and utility connections with the Client and the project team. The following plans are anticipated:
 - General Notes and Legend Plan
 - Demolition, Erosion, and Sediment Control Plan
 - General Site Plan prepared by American Ramp under separate contract
 - Grading Plan prepared by American Ramp under separate contract
 - Drainage Plan
 - Civil Details
3. **Sitework Technical Specifications:** Pare will prepare sitework technical specifications for the construction document bid package based upon the Rhode Island DOT standard specifications for the site engineering related items for this project.



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Task 104 Local Permitting

If necessary Pare will perform the following local permitting services for the project:

1. **RIDEM Wetland Permitting:** Pare assumes that the project will make every effort to avoid impacts to buffer zone and jurisdictional areas. If minor impacts become evident during the design development stage, it is assumed that the proposed pump track will qualify as an Insignificant Alteration of wetlands pursuant to the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (RIDEM 2014).

If necessary, Pare's environmental scientists will prepare a Request for Preliminary Determination (PD) seeking an Insignificant Alteration permit. The PD will consist of the required State application forms, site work affidavit, written project description (including an Avoidance, Minimization and Mitigation statement), site location maps, wetland delineation documentation, and project plans.

- There are no application or permit fees included in this proposal. All permit fees shall be paid by the Client.

This proposal does not include any costs for additional permitting, including state permitting, that may be necessary for this project. Additional permitting efforts can be provided as an additional service as identified.

Task 105 Construction Administration

1. **Project Administration and Coordination:** Pare will coordinate with the Client and Contractor during the construction period. Pare has carried budget for two meetings during this phase.
2. **Construction Observation:** Pare will visit the Site at appropriate intervals as the construction proceeds to observe and report on the progress and quality of the executed work and prepare an opinion of whether or not the work is proceeding in accordance with the design concept. Three field visits are included in this proposal.
3. **Consultation during Construction:** Pare will be available to provide consultation during construction to interpret and make clarifications to contract plans and specifications, and resolve changes brought about by field conditions encountered. Pare has budgeted 8 hours for this task. Construction changes based upon Owner or Contractor requests or substitutions will be considered an additional service.
4. **Shop Drawing Review:** Contractor's submittals will be reviewed for compliance with the plans, specifications, and contract documents and for conformance with the design concept. Review of submittals will be limited to twice. Pare has budgeted 12 hours to this task. Additional reviews will be billed as additional services.
5. **Punch List Review and Closeout:** Pare will assist the Client in the preparation of a sitework punch list to be utilized in determining the Contractor's substantial completion of sitework construction. For this effort, Pare has budgeted for one punch list site inspection visits and for the preparation of a sitework punch list.



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Assumptions & Exclusions

Pare's Scope of Services is defined above. Pare has performed a preliminary review of available information and based on discussions between the Client and Pare, the following specific assumptions & exclusions have been identified. Pare is available to provide additional services related to these exclusions, but at this time they are not included in this proposal.

1. **Out-of-scope items:** Items not specifically included above shall be considered out-of-scope items and are not included in this proposal. Significant changes in the project schedule, additional permitting which may be required, site constraints that are identified through the design phase, and project changes that result in the need for additional engineering efforts are considered out-of-scope items and are not included in this proposal. The following items are further identified as out-of-scope for this proposal.
2. **Underground Utility Locating Services:** The use of ground penetrating radar or similar underground utility locating services to identify the locations and depths of underground utilities is not included in this proposal.
3. **Offsite Improvements:** Offsite improvements including utilities, parking, sidewalks, and signal/roadway improvements have not been included in this proposal.
4. **Temporary Offsite Improvements:** Temporary offsite improvements required during construction including parking, sidewalks, utilities, and roadway improvements have not been included in this proposal.
5. **Construction Cost Estimates:** Pare has not budgeted time to prepare any construction cost estimates for the project. This service can be provided under a supplemental agreement.
6. **Site Lighting:** Pare will not prepare site lighting plans and light pole foundation design.
7. **Early Sitework Packages:** This proposal includes the preparation of one bid package. If an additional bid package or an early site construction document package is required, these services may be provided under supplemental agreement.
8. **Retaining Wall Design:** Design of concrete retaining walls is not included in this proposal.

SERVICES PROVIDED BY THE CLIENT/OWNER

The Client shall provide the following services and information for this project:

- Provide Pare complete access to the buildings, sites, and assistance during all field investigations.
- Provide any conceptual layouts for the proposed renovation and/or conversion of the existing structures.
- Provide equipment and operator to conduct the subsurface stormwater investigation. Additionally, all



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permits, utility mark outs, and other local approvals will be coordinated by the contractor

- Existing information, including but not limited to, as-built drawings, master plans, previous condition surveys, and previous records where appropriate and available.
- Any required police details for the survey work, or other aspects of project, will be provided by the Client, including all costs.
- Architectural drawings and drawings from other disciplines, including Landscape Architects, related to the project, including dimensions, elevations, and details of proposed improvements, alterations, or new construction.
- The services of consultants for the evaluation and design of building gas, electrical, communication and other utilities, as appropriate.
- Electrical Engineering services for design of light poles, foundations, and photometrics.
- Hazardous Environmental Consulting Services.**
- Structural Engineering Services.**
- Utilizations Plans depicting temporary fencing, construction trailers, and other temporary measures required for construction.**
- Construction Cost Estimating Services.

** These services are available through Pare Corporation and may be contracted by supplemental agreement

ADDITIONAL SERVICES

Other services required by the Client that are not part of the Scope of Services, as described above, shall be considered Additional Services. Additional Services shall be furnished by Pare or obtained from others by Pare if requested in writing by the Client. The Client shall pay Pare for Additional Services in accordance with rates and charges agreed to in writing prior to authorization by the Client. Additional services anticipated at this time include:

PERIOD OF SERVICE

The time period for performance of the services as set forth in the Scope of Services is anticipated to be complete by December 2023. Generally, design duration for each of the design phases shall be mutually negotiated to establish reasonable deliverable timeframes.

Services will commence upon written authorization to proceed and information required to perform our services.



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It should be noted that Pare cannot accurately estimate the review time required by the public entities or public meeting schedules. Delay of public review or meeting schedules will affect Pare's ability to complete the work within the proposed time frame. Additional services may materially add to the time required to complete the work on the Project. Pare will be entitled to an equitable adjustment in the Period of Service as a result of services added.

BASIS OF COMPENSATION AND METHOD OF PAYMENT

Pare Corporation shall be paid a Lump Sum Fee for Basic Services as described above. The fee breakdown these services are as follows:

Basic Services

Task 101 Schematic Design Phase (Includes Survey)	\$ 13,500.00
Task 102 Design Development Phase	\$ 17,700.00
Task 103 Construction Documents	\$ 5,850.00
Task 104 Local Permitting	\$ 5,950.00
Task 105 Construction Administration	\$ <u>7,500.00</u>
Total Basic Services (Task 101-105)	\$ 50,500.00

Additional meetings over and above those identified within this proposal will be billed additional services in accordance with the attached schedule of fees.

Invoices for services rendered and expenses incurred will be submitted monthly and are due and payable within seven days of the Client's receipt of payment for the Engineer's invoices from the Client's Client. Invoices not paid within seven days after the Client's receipt of payment for the Engineer's services shall be subject to a one and one-half percent (1.5%) per month interest charge. In addition, for contracts more than thirty days in arrears for payment, Pare may, with seven (7) days written notice, suspend services.

This represents our best judgment at this time as to the effort required to achieve the stated objectives. It should be recognized that should you change the Scope of Services or corresponding level of effort upon which this proposal is based, that an increase or decrease in charges may result. You will be notified of any change regarding an increase in charges and we will not exceed the recommended budget without your approval, nor will be required to work beyond the approved budget.

Pare reserves the right to renegotiate or adjust the fee accordingly if its Proposal for Service is not accepted within a sixty (60) day period.

ACCEPTANCE

This Proposal may be accepted by signing in the appropriate spaces below and returning one copy to us. Your signing of this letter constitutes your acceptance of all of the paragraphs included within the Statement of



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Terms and Conditions, a copy of which is attached and made a part of this Agreement. Please do not hesitate to consult with us concerning any questions regarding this Agreement and the attached Terms and Conditions.

Thank you for the opportunity to submit this Proposal. If you have any questions, please contact us at your convenience.

Sincerely,

James A. Jackson, P.E.
Managing Engineer

Enclosures

Schedule of Fees dated April 19, 2023
Terms and Conditions, dated April 19, 2023

This Proposal for Services and Statement of Terms and Conditions are hereby accepted and executed by a duly authorized signatory who, by execution hereof, warrants that he/she has full authority to act for, in the name of, and on behalf of Client.

Town of Cumberland

By _____

Title _____

Typed Name _____

Date _____

SCHEDULE OF FEES

For Proposal for Services, dated April 19, 2023
(Pare Proposal No. CP217.23)

LABOR:

Engineer I	\$ 130.00 /Hour
Engineer II	\$ 155.00 /Hour
Project Engineer	\$ 175.00/Hour
Senior Project Engineer	\$ 205.00 /Hour
Managing Engineer	\$ 225.00 /Hour
Principal/Officer	\$ 280.00 /Hour
Environmental Scientist/Planner	\$ 115.00 /Hour
Senior Environmental Scientist/Planner	\$ 130.00 /Hour
Managing Environmental Scientist/Planner	\$ 180.00 /Hour
Principal Environmental Scientist/Planner	\$ 185.00 /Hour
Senior Project Coordinator	\$ 150.00/Hour
Senior Technical Consultant/Advisor	\$ 225.00/Hour
CADD Operator/Designer	\$ 100.00/Hour
Senior CADD Operator/Designer	\$ 130.00 /Hour
Principal CADD Operator/Designer	\$ 160.00 /Hour
GIS Specialist	\$ 130.00 /Hour
Construction Observer	\$ 110.00 /Hour
Senior Construction Observer	\$ 130.00 /Hour
Principal Construction Observer	\$ 160.00 /Hour
Engineering Technician	\$ 90.00 /Hour
Senior Engineering Technician	\$ 105.00 /Hour
Clerical/Office Personnel	\$ 100.00 /Hour

REIMBURSABLE EXPENSES:

Mileage (at Federal Standard Rate)	\$ 0.655/Mile
Printing/Copying Wide Format (in-house)	\$ 0.15/Square Foot
Photocopying (in-house)	\$ 0.10/Copy
Outside Services and Out-of-Pocket Expenses	Cost plus 12%

The above rates for technical and support personnel will be charged for actual time worked on the project. In addition, there will be charges for time required for travel from company office to job or site, and return.

For expert and material witness services, including preparation, associated with any actual or potential litigation, mediation, arbitration, or similar proceeding, a fifty percent (50%) premium will be added to the above rates. Overtime worked by non-exempt, non-professional employees will be charged at a rate of one and one-half times the rates shown above for all time worked in excess of 8 hours per day.





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STATEMENT OF TERMS AND CONDITIONS

Attached to and made a part of the Agreement for Professional Services dated April 19, 2023, by and between the Town of Cumberland (Client) and Pare Corporation, (Pare) in respect of the Diamond Hill Park Pump Track (Project) described therein.

SECTION 1. SERVICES TO BE PROVIDED

- 1.1 Pare hereby agrees to provide Client with the services set forth in the Proposal for Services and under the terms and conditions set forth herein.
- 1.2 This Agreement, once executed by all parties, will serve as notice to proceed unless directed otherwise. The attendant Proposal for Service is subject to renegotiation if acceptance by this Agreement is not received within sixty (60) days.
- 1.3 Client acknowledges that work shall proceed under the defined scope of services only upon receipt by Pare of a signed Agreement (this Agreement) and, if required, a retainer payment. The retainer amount shall be held by Pare and shall be applied against the final invoice. In the event the amount of the retainer exceeds the final invoice, Pare shall refund the balance with the final invoice. If the final invoice exceeds the retainer, the Client shall promptly remit the amount due.

SECTION 2. BILLING AND PAYMENT

- 2.1 Client agrees to pay Pare in accordance with the rates and charges set forth in the attached Proposal for Services. Invoices for services rendered and expenses incurred will be submitted monthly by Pare to Client. All such invoices shall be due and payable upon receipt. Additionally, in the case of a lump sum method of compensation, invoices will be based upon Pare's estimate of the proportion of the total services completed at the time of billing.
- 2.2 All invoices shall be paid, and Client account current prior to the filing by Pare of any documents with a governmental agency having jurisdiction over this Project.
- 2.3 In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion shall be promptly paid.
- 2.4 If Client fails to make any payment due Pare for services and expenses within thirty (30) days after the invoice date, the amounts due Pare shall include an interest charge at the rate of one and one-half percent (1.5%) per month from said thirtieth day, and in addition, Pare may, after giving seven (7) days written notice to Client, suspend services under this Agreement until Pare has been paid in full all amounts due for services and expenses. Unless Pare receives payment in full within seven (7) days of the date of the notice, the suspension shall take effect without further notice. Payments on account shall be credited first to interest and then to principal. In the event of a suspension of services, Pare shall have no liability to Client for delay or damage caused Client because of such suspension of services.
- 2.5 In the event of termination by Client under Section 17, Client shall remain liable for and shall promptly pay Pare the full amount for all services rendered by Pare to the date of termination and all termination costs together with interest on all overdue accounts in accordance with the foregoing rate and attendant attorneys' fees and costs of collection. No failure by Pare to exercise any right hereunder shall operate as a waiver nor preclude Pare from exercising any other right.
- 2.6 If Client fails to make payment to Pare in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination by Pare.
- 2.7 In the event legal action is necessary to enforce the payment provisions of this Agreement, Pare shall be entitled to collect from Client any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by Pare in connection therewith and, in addition, the reasonable value of Pare's time and expenses spent in connection with such collection action, computed at Pare's prevailing fee schedule and expense policies.
- 2.8 Payment of invoices is in no case subject to unilateral discounting or set-offs by Client, and payment is due regardless of suspension or termination of this Agreement by either party.



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2.9 Payment of invoices to Pare is the sole responsibility of the signatory of this Agreement and is not subject to third party agreements or payments.

SECTION 3. ADDITIONAL SERVICES

3.1 Services required by Client, which are not part of those described in the Proposal for Services, shall be considered Additional Services. Additional Services shall be furnished by Pare, or obtained from others by Pare, if requested in writing by Client. Client shall pay Pare for Additional Services in accordance with rates and charges agreed to in writing prior to authorization by Client.

3.2 Requests for additional services and any associated fee adjustment must be authorized in writing before additional services can begin. Oral directives by Client authorizing Additional Services will be confirmed in writing by Pare. Client shall pay Pare for orally directed Additional Services furnished by Pare in accordance with Pare's current Schedule of Fees unless other rates and charges for compensation are agreed to prior to the authorization of Additional Services. Pare reviews its Schedule of Fees annually and reserves the right to adjust its schedule as appropriate.

SECTION 4. REIMBURSABLE EXPENSES

4.1 Reimbursable expenses incurred and allocated to the project will be billed to Client in accordance with our fee proposal and/or our attendant Schedule of Fees. Outside expenses incurred and allocated to the project shall be billed at rate of 1.10 times the amount expended. Reimbursable expenses include, but are not limited to, expenses associated with the Project such as: travel including transportation, meals and lodging; printing, copying and handling of documents; postage and delivery; equipment for tests; and securing approval of authorities having jurisdiction over the Project and not specified as part of the fee.

SECTION 5. CLIENT'S RESPONSIBILITIES

5.1 Pare shall indicate to Client the information needed for rendering of services hereunder. Client shall provide to Pare all criteria and full information as to Client's requirements for the Project and such other information as is available to Client and Pare shall be entitled to rely upon the accuracy and completeness thereof.

5.2 Client shall designate in writing a person to act as Client's representative with respect to the services to be rendered; shall examine and respond promptly to Pare's submissions; and shall give prompt written notice to Pare whenever Client observes or otherwise becomes aware of any defect in the work.

5.3 Client shall arrange for access to and make all provisions for Pare to enter upon public and private property as required for Pare to perform his services.

SECTION 6. INSURANCE

6.1 Pare is covered by Workers' Compensation Insurance, Commercial General Liability Insurance, Automobile Liability Insurance and Professional Liability Insurance. Pare will furnish information and certificates upon request.

SECTION 7. STANDARD OF CARE

7.1 . The standard of care for all professional services performed or furnished by Pare under this Agreement will be the care and skill ordinarily used by members of Pare's profession practicing under similar circumstances at the same time and in the same locality.

SECTION 8. USE OF DOCUMENTS

8.1 All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media prepared or furnished by Pare under this Agreement are instruments of service in respect to this Project, and Pare shall retain an ownership and property interest therein whether or not the Project is completed. Client shall not rely in any way on any Document unless it is in printed form, signed or sealed by Pare or one of its Consultants.

8.2 When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator. If any information is provided in electronic format, Client recognizes that such plans, documents or other information recorded on or



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transmitted as electronic media, including CADD and BIM documents ("Electronic Documents") are subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the electronic documents are provided to Client for informational purposes only and not as record documents.

8.3 Client may make and retain copies of Documents for information and reference in connection with use on the Project by Client. Pare grants Client a license to use the Documents on the Project, extensions of the Project, and other projects of Client, subject to the following limitations: (1) Client acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Pare, or for use or reuse by Client or others on extensions of the Project or on any other project without written verification or adaptation by Pare; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Pare, as appropriate for the specific purpose intended, shall be at Client's sole risk and without liability or legal exposure to Pare or to Pare's Consultants; (3) Client shall indemnify and hold harmless Pare and Pare's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Pare; and (4) such limited license to Client shall not create any rights for third parties.

8.4 If Pare at Client's request verifies or adapts the Documents for extensions of the Project or for any other project, then Client shall compensate Pare at rates or in an amount to be agreed upon by Client and Pare.

SECTION 9. OPINIONS OF PROBABLE COST

9.1 Since Pare has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, opinions of probable project cost and construction cost provided for herein are to be made on the basis of his experience and qualifications and represent its best judgment as an experienced and qualified professional engineer, familiar with the construction industry. Pare cannot and does not guarantee nor make warranty, expressed or implied, that proposals, bids, or actual project or construction cost will not vary from opinions of probable cost prepared by Pare.

SECTION 10. CERTIFICATIONS

10.1 Pare shall not be required to sign any documents, no matter by whom requested, that would result in Pare having to certify, guaranty or warrant the existence of conditions whose existence Pare cannot ascertain. Any certification provided by Pare shall be so provided based on Pare's knowledge, information and belief subject to the preceding sentence, and shall be given in Pare's professional opinion consistent with the Standard of Care. Pare shall be compensated for any work necessary to verify project compliance with regulatory standards for purposes of such certification.

10.2 The proposed language of any such certificates, affidavits or certifications requested of Pare or Pare's consultants shall be submitted to Pare for review and approval at least fourteen (14) days prior to expected execution.

SECTION 11. LIMITATION OF LIABILITY

11.1 To the maximum extent permitted by law, Client agrees to limit Pare's liability to Client for or on account of all claims and/or damages of any nature whatsoever caused by or arising out of Pare's performance of its services, such that the total aggregate liability of Pare for any and all claims and/or damages of any nature whatsoever, arising out of the performance of Pare's services on the Project, shall not exceed \$75,000 or Pare's total fee for services rendered on the Project, whichever is greater.

11.2 Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any special, indirect, incidental, or consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by Client or Pare, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

SECTION 12. SERVICES MADE NECESSARY BY LACK OF CONTRACTOR PERFORMANCE

12.1 It is Client's responsibility to hire the Contractor, and it is the Contractor's responsibility to install and complete fully operable systems. Client agrees to pay Pare in accordance with its Schedule of Fees for all its trouble-shooting and/or corrective work due to Contractor's inability to achieve satisfactory operation.



SECTION 13. HAZARDOUS WASTE/ASBESTOS/CONTAMINANTS

13.1 In consideration of the substantial risks to Pare involving or relating to the actual or threatened release, escape or discharge of hazardous waste, asbestos and/or other contaminants, it is agreed that Client to the fullest extent permitted by law, shall release and indemnify and hold harmless Pare and its consultants, agents and employees, from and against all claims, damages, losses and expenses, direct and indirect, including but not limited to attorneys' fees and defense costs, arising out of or resulting from the performance of any services by Pare, or claims against Pare related to, involving or arising out of hazardous waste, asbestos or other contaminants.

SECTION 14. INDEMNIFICATION

14.1 Pare agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Pare's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom Pare is legally liable.

14.2 The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Pare, its officers, directors, employees and subconsultants (collectively, Pare) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

14.3 Neither the Client nor Pare shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

SECTION 15. SUSPENSION OF SERVICES

15.1 If the Project is suspended by Client, or the services are suspended by Pare in accordance with Paragraph 2.4 of this Agreement for more than thirty (30) calendar days, Pare shall be compensated for services performed and charges incurred prior to receipt from Client or issuance by Pare of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. Depending on the duration of the stoppage, an additional adjustment may be necessary to cover wage increases and general escalation. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the Project is suspended for more than ninety (90) calendar days, Pare may, at its option, terminate this Agreement upon giving notice in writing to Client.

SECTION 16. DISPUTE RESOLUTION

16.1 Any disputes arising out of or relating to this Agreement, including disputes under termination, shall first be submitted to nonbinding mediation unless the parties mutually agree otherwise.

16.2 The parties further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

16.3 On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representative and shall meet within ten (10) days after the service of notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of the meeting. Should the parties themselves be unable to agree on a resolution of the dispute, then the parties shall proceed with mediation in accordance with the mediation rules of the American Arbitration Association. The cost of mediation shall be borne equally by both parties.

16.4 Any disputes not settled by agreement of the parties shall be decided by litigation in a court of the State of Rhode Island

SECTION 17. TERMINATION

17.1 Either Client or Pare may terminate this Agreement at any time with or without cause upon giving the other party ten (10) calendar days prior written notice. Client shall within thirty (30) calendar days of termination pay Pare for all



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services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this Agreement.

SECTION 18. TITLES

18.1 The titles in this Agreement are for general reference only and are not part of the Agreement.

SECTION 19. GOVERNING LAW

19.1 The laws of the State of Rhode Island will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in the courts of the State of Rhode Island.

SECTION 20. INTEGRATION

20.1 This Agreement comprises the final and complete agreement between Client and Pare. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Amendments to this Agreement, except as otherwise provided herein, shall not be binding unless made in writing and signed by both Client and Pare.

SECTION 21. SEVERABILITY AND SURVIVAL

21.1 Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Client and Pare shall survive the completion of the services hereunder and the termination of this Agreement.

21.2 The failure by Pare or Client at any time to enforce or to seek strict compliance with any provision of this Agreement, or to exercise any right or remedy arising from the breach of any provision of this Agreement, does not constitute a waiver of that provision, or remedy, or any other provision of this Agreement or available remedy.

SECTION 22. SUCCESSORS AND ASSIGNS

22.1 Client and Pare each binds itself and its partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this Agreement.

22.2 Neither Client nor Pare shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 23.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Pare from employing such independent consultants, associates, and subcontractors as it may deem appropriate to assist in the performance of services hereunder.

22.3 Nothing in this agreement shall be construed to give any rights or benefits to anyone other than Client and Pare.

SECTION 23. ENTIRE AGREEMENT

23.1 This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no verbal understandings, statements, or stipulations bearing upon the meaning or effect of this Agreement. This Agreement may only be modified or amended by a written instrument executed by both parties, except as may be otherwise provided herein.

(END)

Town of Cumberland

Fiscal Note (R-23-44)

Proponent: Mayor's Office

Date: 06/02/2023

Description of Ordinance, Rule, or Resolution:

A resolution authorizing and empowering Mayor Jeffrey J. Mutter to enter into an agreement with Pare Corporation for Site and Civil Engineering Services for the Diamond Hill Park Pump Track in an amount not to exceed fifty thousand five hundred dollars (\$50,500)

Cost(s) of: The total cost of this is not to exceed fifty thousand five hundred dollar (\$50,500)

Are said Costs/Revenue budgeted? If so, describe. If not, where shall the appropriation originate?

The cost associated with this project will be funded through a RIDEM Recreational Grant for the Diamond Hill Park Pump Track.

Effect on the Tax Rate of the Town:

There shall be no further effect on the tax rate.

Source(s) of Data: Mayor's Office; Recreation

Proponent Signature:



Jeffrey J. Mutter
Mayor
June 2, 2023



Town of Cumberland Routing Sheet for Legislation to Appear Before the Cumberland Town Council

Ordinance X Resolution Relating to AUTHORIZING AND EMPOWERING MAYOR JEFFREY J. MUTTER TO ENTER INTO AN AGREEMENT WITH PARE CORPORATION FOR SITE AND CIVIL ENGINEERING SERVICES FOR THE DIAMOND HILL PARK PUMP TRACK IN AN AMOUNT NOT TO EXCEED FIFTY THOUSAND FIVE HUNDRED DOLLARS (\$50,500)

(1) This legislation has been approved, and the language is acceptable for publication, by Kelley Morris Salvatore, Town Solicitor

Signed: [Signature] Date and Time: 5/22/2023

(2) This legislation and all attached information, specifically all proposed funding sources, has been approved by GENE FELUCCI of the Town Finance Department, certifying that all financial notes and other financial documentation has been attached.

Check if no Fiscal Note is required.

Signed: [Signature] Date and Time: 5/22/23

(3) This legislation has been approved by Jeff Mutter of the Mayor's Office.

Signed: [Signature] Date and Time: 5/23/2023 @ 9:57am Mayor Jeffrey J. Mutter

(4) This legislation has been accepted for placement on the Town Council Agenda for the meeting to be held on June 7, 2023 by S. Provanello of the Town Clerk's Office. This authorization confirms that all four copies of the necessary document, including a copy in an electronic format, has been attached and signed by the designated department and has been received prior to the designated 3:30 p.m. deadline.

The Town Clerk's Office will issue a Legislation number.

Signed: [Signature] Date and Time: 5/23/23 @ 8:30am

This routing sheet must be completed in the order detailed above to ensure complete and timely acceptance for the next scheduled Town Council Meeting.

*Should a given piece of legislation prove to be extremely time sensitive, the Mayor's signature and only the Mayor's signature below authorizes said legislation to be exempt from the necessary route described above.

Jeffrey J. Mutter, Mayor